IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1063 OF 2005

Lahanu Kalu Gangurde since deceased
thorugh his L.Rs .. ..Appellants
Versus
Soma Jivlya Gangurde and Ors. .. ..Respondents

Mr.Anilkumar Patil for appellants

CORAM : P.V.KAKADE, J.

DATE : 20TH SEPTEMBER, 2005.

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by Addl. District Judge, Nasik dated 29.11.2004 dismissing the appeal and confirming the judgment and order passed by Civil Judge Junior Division, Satana dated 13.10.1995 decreeing the plaintiffs' suit for declaration and partition and consequential relief of separate possession of respective share.

2. I have heard the learned counsel for the appellants. Perused the record.

3. The plaintiffs have filed the suit for partition of the suit property on the ground that the suit property was ancestral joint family property and they had 1/2 share in the suit property. It was further alleged that the defendant had refused to give land of their share and as such suit came to be filed. The defendants contested the suit denying the allegations of the plaintiff with contention that the partitions were already effected and therefore, there was no question of effecting partition as alleged by the plaintiffs. Hence the suit was sought to be dismissed.

. The learned trial judge adjudicated the dispute on the basis of available evidence and came to the conclusion that the plaintiff had proved that the property was joint family property and plaintiffs 1/2 share therein. It was also held to be proved that the defendant was refused to give share of the plaintiffs to them and hence the suit came to be decreed. The appeal was carried to the District Court, who after hearing both the parties came to the conclusion that the findings recorded by the Trial Court were just, legal and proper and therefore dismissed the appeal. Hence the present appeal.

4. At the outset it must be noted that there is absolutely no substantial question of law involved in this appeal. The learned counsel for the appellants sought to put reliance on so called admission of the plaintiff regarding earlier partitions were effected about 40 years ago. However, the evidence on record is sufficient to show that though it is alleged that the partitions were effected 40 to 50 years ago and allotment of share to the plaintiffs in the form of cash and pair of bullocks, the appellant failed to prove this fact by leading cogent evidence. The fact of allotment of share to the other branches in the year 1981 has been admitted by the defendants. The fact has also been admitted that at that time no share was allotted to the plaintiffs though they had claimed their share. In view of this factual matrix, both the courts below have concurrently recorded the finding to the effect that the plaintiffs suit for partition deserves to be decreed. Taking into findings recorded by both the courts below I hold that the evidence on record are sufficient to be properly appreciated by both the courts below and therefore, no interference is called for by this Court.

. In the result the appeal stands dismissed.